They knew fully well that the insurance policy contained the usual exception clauses against loss or damage by riot or civil commotion, but they were content with it. The truth of the matter is that this country had been at peace for so long that no one expected the tragic events of May 13 (1969) to happen and consequently the respondents were of the view that it was not necessary to pay increased premium to insure against risk of riot or civil commotion. At the appeal the respondents admitted that they did not want to cast unnecessary burden on hirers to pay the increased premium for such risks.

It is the appellant's contention that even before the breach there was waiver of clause 8 of the hire-purchase agreement and that the respondents by their conduct are estopped from insisting on their strict rights. The respondents on the other hand contend that there was no waiver of clause 8 and even if there was, they are protected by clause 16 of the hire-purchase agreement which provided:

"No waiver by the owners of any breach by the hirer of any of his obligations under this agreement shall operate as a waiver or notice of or consent to any subsequent breach. No time or other indulgence granted by the owners shall affect their strict rights under this agreement."

In *Barrett Bros. (Taxis) Ltd.* v. *Davies*,[1] Lord Denning M.R. said:

"The principle of waiver is simply this. If one party by his conduct leads another to believe that the strict rights arising under the contract will not be insisted upon, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict rights when it would be inequitable for him so to do."

On the facts, that is precisely the position here. The hire-purchase agreement clearly made it a condition that the appellant keep the respondents indemnified against all loss or damage to the vehicle from whatever cause arising, which includes loss or damage occasioned by riot or civil commotion but the respondents by selecting the insurers themselves and taking out the policy themselves before the execution of the hire-purchase agreement which did not cover against loss or damage occasioned by riot or civil commotion have clearly waived this condition of the hire-purchase agreement.

When the appellant took out the second policy from the same insurers on identical terms and conditions she was in fact acting on the belief that it was not necessary to insure against loss or damage occasioned by riot or civil commotion. On these grounds, I hold that the respondents by their conduct have waived the condition that the vehicle be insured against loss or damage occasioned by riot or civil commotion and therefore they cannot claim under clause 8.

There remains the question whether the respondents are now entitled to rely on clause 16 of the hire-purchase agreement. This clause is commonly known as a "saving clause" but such a clause does not mean that the owners can do no wrong or that their rights are protected no matter what the circumstances. In this case the circumstances were such that the owners themselves thought that it was not necessary to insure against loss or damage occasioned by riot or civil commotion. They took out the first policy themselves and therefore there was no breach by the hirer as contemplated by clause 16. Neither is there a subsequent breach since the second policy is identical with the first and issued by the same insurance office. There was in effect an agreement between the parties that the vehicle will not be insured against loss or damage occasioned by riot or civil commotion and therefore clause 16 will not apply. In all the circumstances of this case, I hold that there has been no breach of the hire-purchase agreement. For these reasons, I allow the appeal with costs.

Appeal allowed.

Solicitors: *Rithauddeen & Aziz; Lovelace & Hastings.*

ONG BOON SEONG v. SYED HUSSEIN ALATAS

[O.C.J. (Abdul Hamid J.) July 10, 1971]

[Kuala Lumpur — Civil Suit No. 471 of 1971]

Practice and Procedure — Injunction — Interlocutory injunction — Application to dissolve or set aside — Nature of — Whether right of property affected or threatened.

Societies — Proper party to bring action on behalf of — Societies Act, 1966, s. 9(c).

This was an application by the defendant for an order that the *ex parte* interlocutory injunction granted on June 29, 1971 be dissolved or set aside. It was ordered that the applicant/defendant be restrained and prohibited until final disposal of the suit from continuing to act as if he were chairman of the Party Gerakan Rakyat Malaysia or as a member of the party, from doing any thing to convene a meeting of the party, and from making statements as if he were chairman or member.

Held: (1) to entitle the plaintiff to an interlocutory injunction the court should be satisfied that there was a serious question to be tried at the hearing, and that on the facts before it there was a probability that the plaintiff was entitled to relief. The court would grant an interlocutory injunction to preserve property or prevent irreparable damage or to keep matters in *status quo* until trial, where the plaintiff made out a case on the merits, though there was a technical defence on which the defendant might succeed at the trial;

(2) in the present case, the plaintiff was not only a member of the Party Gerakan Rakyat but also a committee member. As a member he could not be said to have no interest whatever in the property of the party. He was entitled as a member to take legal action to prevent any non-member from making unauthorised use of party property;

(3) it could not be denied that as a member of the party, the plaintiff had the right to sue whilst it might be true that he sued in his own name, the fact remained that at all material times, he was holding the office of Deputy Secretary-General and a member of the Central Committee. The plaintiff was therefore competent to institute these proceedings;

(4) in view of the circumstances of this case, the court should not set aside the interlocutory injunction. The interim injunction was necessary to keep matters in *status quo* until the hearing of the suit.

Case referred to:-

(1) *Vethanayagam* v. *Karuppiah & Ors.* [1968] 1 M.L.J. 283 on appeal [1969] 1 M.L.J. 146.

CIVIL SUIT.

J. Puthucheary with *R. R. Sethu* for applicant/defendant.

Ng Ek Teong for the respondent/plaintiff.

Cur. Adv. Vult.

Abdul Hamid J.: This is a notice of motion by the applicant/defendant asking for an order that the *ex parte* interlocutory injunction granted by this court on 29th June, 1971 be dissolved or set aside.

It was ordered that the applicant/defendant be restrained and prohibited until the final disposal of this suit —

(i) from persisting and continuing to claim, assume or pretend to be or act either as if he is or in the name of the chairman of the party Gerakan Rakyat Malaysia (hereinafter called "the Party") or as if he is a member of the party.

(ii) from taking any action to prepare for or convening or holding any meeting on 3rd and 4th July, 1971 or on any other date or dates purporting to be a Biennial Delegates' Conference of the party or to be any other conference or meeting of the party or any of its organisations.

(iii) from making any statement or utterances or issuing any Circulars as if he were the Chairman or a member of the Party.

The motion was brought in the name of Ong Boon Seong. In the affidavit it is stated that he is the Deputy Secretary-General of the Party Gerakan Rakyat Malaysia. On 14th June, 1971, he was elected to act as Secretary-General of the party following the resignation of Dr. Tan Chee Khoon on 13th June, 1971 Dr. Syed Hussein Alatas the defendant, was the national chairman of the party since its inception in 1968. It is averred that he resigned on 13th June, 1971, by a letter dated 12th June, 1971, a copy of which was annexed to the affidavit. It reads —

"The Secretary General,
Gerakan Rakyat Malaysia.

Dear Chee Khoon,

This is to tender my resignation from the party for reasons known to you. I cannot function anymore to prevent the party from going down the drain and fall into the hands of elements which do not have the interest of the down trodden at heart and which will revive an alliance type style of politics more devastating to the country than hitherto known.

If the coming delegates assembly wants me back I shall consider rejoining the party, depending how the Central Committee shall be composed.

Yours fraternally,
(Signed)
(SYED H. ALATAS)"

(The tone of the letter leaves no room for any doubt as to the defendant's intention).

On 14th June, 1971, the central committee of the party decided to accept the resignation of the defendant and the plaintiff in his capacity as acting secretary-general informed the defendant by letter dated 16th June, 1971 that his resignation had been accepted The letter reads —

"Dr. Syed Hussein Alatas,
No. 11 Ross Avenue,
Singapore.

Sdr. Hussein Alatas,

I am directed by the central committee to refer to your letter of resignation from the chairmanship and the party dated 12th June, 1971 and which was submitted to the central committee at its meeting on Sunday 13th June, 1971 by the secretary-general Dr. Tan Chee Khoon.

The central committee referred your resignation to you for reconsideration but you decided to reaffirm it.

In the circumstances the central committee has at an emergency meeting on 14th June, 1971 decided to give effect to your resignation and you are therefore hereby notified that you are no longer a member or the chairman of the party.

Yours faithfully,
(Signed)
(ONG BOON SEONG)
Ag. Secretary-General."

It is further averred that immediately after his resignation, the defendant made public statements to the press stating that he was out of the party. However, subsequently the defendant publicly claimed that he still is a member and chairman of the party. He also openly proclaimed as reported in the press, that he was calling for and preparing to hold a Biennial Delegates' Conference of the party on the 3rd and 4th of July, 1971.

It is the plaintiff's contention that the conference, if convened, will be unconstitutional as clause VII rule 7 of the party constitution provides that such conference can only be convened by the central committee.

The plaintiff also averred that the defendant visited party headquarters at No. 9, Jalan 55, off Jalan Templer, Petaling Jaya and made use of its premises and facilities as if he were not only a member but also a chairman of the party, in particular he discovered that on 26th June, 1971, the defendant used the facilities of the party's headquarters to prepare for the said conference and that a press release dated 25th June, 1971 signed by him as chairman of the party was also prepared — (OBS 3).

It is expressly stated that the biennial delegates' conference of the Gerakan Rakyat Malaysia will be held as scheduled — on 3rd and 4th of July, 1971 at the Transport Workers' House, No. 21, Jalan Barat, Petaling Jaya.

It is also proclaimed that he in his capacity as the National President of the Gerakan Rakyat Malaysia will officially declare open the conference.

The defendant added that the secretariat is in full swing preparing for the forthcoming conference.

The plaintiff also affirmed that having discovered the press release, the central committee authorised the plaintiff, in consultation with the acting chairman, to take such action as he may deem fit. It is the plaintiff's contention that the defendant by so acting is causing and continuing to cause irreparable harm to the party and its office bearers.

The plaintiff further contended that by proclaiming that he is chairman of the party and in proposing

to hold a Biennial Delegates' Conference, the defendant's intention is to rally support for himself and to pass resolutions and carry out elections for a so-called new central committee of the party with a view to create chaos amongst its members and to confuse the public.

It is the plaintiff's contention that the holding of such a conference will rouse tensions which might be of such magnitude as to give rise to violence and that the action of the defendant is aimed at breaking up the party, an action which is undesirable in the present political conditions of the country, especially in view of the unfortunate incidents of 13th May, 1969 and in view of the efforts of the government to bring about goodwill amongst the people of the country including the banning of speeches on sensitive issues. In particular it is undesirable to have in this country dissension or strife of a political nature or chaos in political parties in view of the present resurrection of communist subversive activities which as is well-known thrives on unrest, chaos and political dissension in a country.

With regard to the averment that the holding of such conference will invariably rouse tensions, I am of the opinion that this is mere speculation on the part of the plaintiff and I am unable to accept it as facts within the knowledge of the plaintiff, sufficient to establish that the plaintiff will suffer irreparable injury. I am further of the opinion that there is no justification on the part of the plaintiff to make speculations importing into his affidavits, matters such as May 13th incidents, the sensitive issues, political strife and the resurrection of communist subversive activities. I do not think that this is a valid factor which should influence the court in the exercise of its discretion.

In so far as the court is concerned, it must have regard to the circumstances to which it usually has regard in considering whether or not it will grant this type of relief.

"To entitle the plaintiff to an interlocutory injunction the court should be satisfied that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the plaintiff is entitled to relief. See judgment of Cotton L.J. in *Preston* v. *Luck* 27 Ch. D. 506. The court will grant an interlocutory injunction to preserve property or prevent irreparable damage or to keep matters in *status quo* until trial, where the plaintiff makes out a case on the merits, though there is a technical defence on which the defendant may succeed at the trial. *Cory* v. *Reindeer S.S. Co.* 31 T.L.R. 530" [See *Mallal's* Supreme Court Practice p. 677].

On the facts before me, it would seem that the defendant had tendered his resignation as member and chairman of the party. It is, I think, reasonable for the court to assume, for purposes of granting the interlocutory injunction, that the defendant has ceased to be a member and chairman of the party. That being the case, I am unable to see why the defendant should continue to usurp the powers of party chairman and assume management of the affairs of the party. The plaintiff sued in his own name. Nevertheless he has stated, and it has not been challenged that the plaintiff is a member of the central committee and is also the deputy secretary-general of the party. It would also appear that he was authorised by the central committee to take such action as he deemed fit to counter the action of the defendant.

As deputy secretary-general and member of the central committee of the party, I do not think it can be denied that he has the right to prevent a non-member from making unauthorised use of the party's property such as the premises, stationery, machines and other equipment.

On the facts, I am also satisfied that there is a serious question to be tried, namely, whether the defendant is or is not a member and chairman of the party. The plaintiff is, on the balance of probabilities, entitled to the relief sought if, at the hearing of the suit, it is found that the defendant is no longer chairman and member of the party. In the circumstances, it is desirable not only to prevent irreparable harm to the party's property but also any change in *status quo* from taking place until the final determination of the merits of the case.

The applicant/defendant is now asking the court to dissolve or set aside the interlocutory injunction. There are two affidavits in support of the application, one by Lim Eng Chuan a member of the central committee and the other by the defendant.

Lim Eng Chuan's affidavit seems to confirm that the defendant had in fact tendered his letter of resignation. Though it is disclosed that the central committee had not made any decision whether to accept the defendant's resignation at the meeting held on the 13th of June, there is nothing to show that the decision taken by the central committee at the meeting held on 14th June, 1971 was of no effect. The deponent himself attended the meeting, and though he affirmed that no decision on any matter was taken when he left the meeting, this does not in any way establish that the central committee had not decided to accept the defendant's resignation at that meeting.

The defendant himself has not challenged that he sent the letter of resignation which was accepted by the central committee at its meeting held on the 14th of June. The defendant is contending that the central committee that met on June 13th rejected his resignation and having once rejected, it was not open to the purported central committee to accept his purported letter of resignation. If that were his contention, then that clearly becomes an issue which has to be tried. According to the plaintiff, the central committee only referred his resignation for re-consideration. The defendant decided to re-affirm it (OBS 2). It is evident from the contents of paragraph 8 of the defendant's affidavit that he was asked to re-consider when he said —

"...I was not certain of what my position was after the central committee of the party had asked me to reconsider my resignation."

Although the defendant has contended that the central committee which appointed the plaintiff deputy secretary-general, lacked the required quorum for a valid act, he did not refer to any particular meeting of the central committee. It could be that he was referring to the meeting held on 14th June, 1971 at which, according to Lim Eng Chuan, only 6 members were

present after he left. Paragraph 6 of clause VIII of the party constitution provides amongst other things, that —

"At least one half of the committee members must be present for its proceedings to be valid."

However, there is a proviso which provides that —

"... no act or decision of the committee shall be rendered invalid by reason of any vacancy in the committee."

The plaintiff filed a further affidavit in reply to the point raised by the defendant and alleges that there were 9 members. Being a question of fact, I do not think this court can decide on the strength of the affidavits alone. In the plaintiff's further affidavit, it is also contended that even assuming that 6 members were present, such number was sufficient to satisfy the requirement of paragraph 6, clause VIII as the required quorum. This is a question of interpretation and it is for the court to decide at the trial of this suit.

The defendant admitted making a statement that he was out of the party. He contended that he could and did call and convene a conference of the party acting in his capacity as chairman. Basically this is the substantive issue that has to be tried and the court will not try this issue. To do so would mean going into the merits of the claim.

Before proceeding further, I wish to deal with the defendant's contention that the plaintiff is not authorised to represent the party in this legal action. Mr. Puthucheary counsel for the defendant drew my attention to section 9(c) of the Societies Act (No. 13 of 1966) which reads —

"9 (c) a society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any person registered as an officer of the society;"

It is argued that the plaintiff has no right to start this action for and on behalf of the society as he is not a registered public officer. Mr. Ng Ek Teong counsel for the plaintiff submitted that the plaintiff is suing in his own name and he has properly instituted this legal action on the grounds, first, as a member, he instituted this legal action in the capacity of his individual right as a member. Secondly, he sues in his own right as a person who has been appointed secretary-general; and thirdly, he sues in the representative capacity authorised by the central committee. To my mind, it cannot be denied that as a member of the party, the plaintiff has the right to sue. Whilst it may be true that he sued in his own name, the fact remains that at all material times, he was holding the office of deputy secretary-general and a member of the central committee. In my opinion, the plaintiff is competent to institute these proceedings.

In any event even if the rights claimed by the plaintiff are at present in doubt, I am of the opinion that in view of the circumstances of this case, the court should not set aside the interlocutory injunction.

I refer to page 24 of *Kerr* on Injunctions, (6th ed.) where it states —

"In doubtful cases where the question as to the legal right is one on which the court is not prepared to pass an opinion, or the legal right being admitted the fact of its violation is denied the course of the court is either to grant the injunction pending the trial of the legal right, or to order the motion to stand over until the legal right has been tried. In determining which of the two alternatives it shall adopt, the court is governed by the consideration as to the comparative mischief or inconvenience to the parties which may arise from granting or withholding the injunction."

For the purposes of this application, it is for the defendant to show to my satisfaction, in order to succeed —

"that the facts upon which the injunction was granted no longer exists or that it was obtained by misrepresentation or suppression of material facts;" (See *Gan Realty Sdn. Bhd. & Ors.* v. *Nicholas & Ors.* [1969] 2 M.L.J. 110 — See judgment of Raja Azlan Shah J.). The decision of Raja Azlan Shah J. was upheld by the Federal Court on appeal in *Nicholas & Ors.* v. *Gan Realty Sdn. Bhd. & Ors.* [1970] 2 M.L.J. 89). Ali F.J. in the course of his judgment said — "... Raja Azlan Shah J. refused to discharge the injunction upon consideration of the facts available before him. It may well be that the trial court will ultimately decide to dismiss the plaintiff's action. But we are not to speculate on this. For the present we are of opinion that it is just and proper for the interim injunction to remain undischarged until the trial."

The learned Lord President (Azmi L.P.) in the course of his judgment in that case said —

"... Our law on injunctions is given in section 50 *et seq* of the Specific Relief (Malay States) Ordinance, 1950. Here injunctions are divided into 2 kinds, namely temporary and perpetual. Section 51 says that temporary injunctions are such as are to continue until a specific time or until the further order of the court and they may be granted to any party. They may be granted at any period of a suit and are regulated by the law relating to the Civil Procedure in force in the Malay States. The relevant law is now found in O. 50 of the Rules of the Supreme Court 1957.

Rule 1 of the said Order reads as follows: —

1. When by any contract a *prima facie* liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court or a judge may make an order for the preservation or interim custody of the subject matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured.

This rule extends to every case where the court sees as between plaintiff and the defendant there is something which ought to be done for the security of the property. See *Chaplin* v. *Barnett* (1912) 28 T.L.R. 246."

At the hearing of this application, Mr. Puthucheary cited the case of *Vethanayagam* v. *Karuppiah & Ors.*[1] and submitted that the learned judge in that case had followed the right principle. In the first place the facts of that case seem to be different from the facts of the present case. There the interim injunction was refused. Though it was established that the plaintiff was a member of the Kampong Pandan Branch of the Malaysian Indian Congress, at the time of the meeting which elected the defendants, the members of the branch committee of this local branch were found to be an unlawful society. As such, the learned trial judge decided that the court could not lend its aid to grant an injunction at the suit of the plaintiff, a member of the unlawful society to restrain the defendants from infringing the rules of the Malaysian Indian Congress. In arriving at the decision, the learned judge was guided by the well-established principle that —

"Jurisdiction to grant a temporary injunction is always a matter of discretion which is to be exercised in accordance with well-known principles. An order for a temporary injunction can be sought only in aid of a prospective order for a perpetual injunction. If, therefore, in the event of the plaintiff's success, he cannot obtain a decree for perpetual injunction, it is not competent for him to ask for a temporary injunction (see *Bishun Prashad* v. *Sashi Bhusan* A.I.R. 1923 Pat. 133. In other words, a temporary injunction will not be granted in cases where a permanent injunction is not available under sections 52 to 54 of the Specific Relief (Malay States) Ordinance, 1950. Section 54 (f) enacts that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced."

On appeal, the learned judge's order was upheld and Suffian F.J. in his judgment at page 149 said —

"The third question is, on these facts, was the judge right in refusing to issue an interim injunction against the defendants. As has been seen, he refused because the Kampong Pandan branch was an unlawful society, no member of an unlawful society could acquire a right founded on an unlawful body which neither can sue nor be sued. If at the relevant time the branch was unlawful society, then by virtue of section 42 of the Societies Act any office-bearer and any person managing or assisting in its management, such as the defendants, committed a serious offence (punishable with up to five years imprisonment) and the effect of the plaintiffs' application for an injunction was to request the court to prevent the commission of acts which would be criminal. Now, injunctions in the Malay States are dealt with in Part III of the Specific Relief (Malay States) Ordinance, 1950. This corresponds to Chapters IX and X of the Indian Specific Relief Act, 1877. With regard to the Indian Act, it was said by Beaumont C.J. in a Bombay case, *Ramdas Khatau & Co.* v. *Atlas Mills Co. Ltd.*, A.I.R. 1931 Bom. 151 that the Act was not exhaustive and it was open to the courts in Bombay to rely on English cases on injunctions. With respect I agree that the same applies to the courts in the Malay States. In England it was held as long ago as in 1861 in *Emperor of Austria* v. *Day* 45 E.R. 861, 875, that the courts have no jurisdiction to prevent the commission of acts which are merely criminal or merely illegal and do not affect any rights of property. So as there is no evidence here of the plaintiff's rights of property having been affected, the judge was right in refusing to issue the injunction sought, assuming that the Kampong Pandan branch was an unlawful society."

Nevertheless Suffian F.J. pointed out —

"... by the time of the hearing of arguments on the second day the branch had undergone a metamorphosis — it had become a lawful society. The position at the time of arguments then was this: the plaintiff and the defendants were members of the M.I.C., the Kampong Pandan branch was a lawful society, but as at the time of the defendants' election to its committee on 15th October, 1967, it was an unlawful society, persons who took part in the election committed an offence (section 43 of the Societies Act) and therefore the election was, in my judgment, null and void and the defendants were not office-bearers at all. In view of this, the learned judge (had he wanted to) could have issued an injunction restraining the defendants from acting as members of the committee."

Mr. Puthucheary argued that there is nothing to show that the plaintiff's right of property is affected or threatened and it is submitted that the nature of property interest threatened must be disclosed in the writ and statement of claim.

In the present case, the plaintiff was not only a member of the Party Gerakan Rakyat but also a committee member. As a member he cannot be said to have no interest whatever in the property of the party. To my mind, he is entitled as member to take legal action to prevent any non-member from making unauthorised use of the party property. As deputy secretary-general, he is in the management committee, namely, the central committee, and one of his duties is to assist the secretary-general and act in his absence. Clause X paragraph 3 of the party's constitution sets out the duties of a secretary-general and that includes conducting of all correspondence and the keeping of all books, documents, and papers. I do not for a moment think that it can be seriously argued that as deputy secretary-general, the plaintiff has no interest in the property of the party. Again to my mind, he is entitled to take any action to prevent any wrongful invasion of the party's property.

The plaintiff averred that he was elected by the central committee to act as secretary-general following the resignation of Dr. Tan Chee Khoon as secretary-general on 13th June, 1971. If he in fact was elected to act as secretary-general, then I should think that there is every justification for this court to conclude that as secretary-general, he not only has to conduct the business of the party but also to generally control and manage the use of the party's property. I am aware that the defendant is disputing the plaintiff's election as secretary-general. In that event, it really becomes an issue which the court may ultimately have to decide and this could only be conveniently done at the trial.

In his affidavit, the defendant maintains that he is still a member of the party. Notwithstanding his letter of resignation, which he denied was in fact a resignation, it is his contention that his resignation from the membership of the party will only be effective from the 30th day which falls on 12th July, 1971. To my mind, that is a substantive issue for the court to construe. This court will not go into the merits of the case except insofar as to consider the facts before it for the purpose of exercising its discretion whether or not the interim injunction be dissolved or set aside. On the facts before me, I am satisfied that there is a serious issue to be tried. In all probability, there may be a defence on which the defendant may succeed at the trial. Nevertheless on the facts before me, I am firmly of the view that the interim injunction is necessary to keep matters in *status quo* until the hearing of the suit.

Before I conclude, may I respectfully say that in considering this application, I have also been guided by the passage which the learned Lord President quoted from *Kerr* on Injunctions, (6th ed.), page 2 which reads as follows —

"The interlocutory injunction is merely provisional in its nature, and does not conclude a right. The effect and object of the interlocutory injunction is merely to keep matters in *status quo* until the hearing or further order. In interfering by interlocutory injunction, the court does not in general profess to anticipate the determination of the right, but merely gives it as its opinion that there is a substantial question to be tried, and that till the question is ripe for trial, a case has been made out for the preservation of the property in the meantime in *status quo*. A man who comes to the court for an interlocutory injunction, is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges, and can satisfy the court that the property should be preserved in its present actual condition, until such question can be disposed of."

The learned Lord President also quoted another passage on page 15 of *Kerr* on Injunctions which reads —

"In exercising the jurisdiction, the court does not pretend to determine legal rights to property, but merely keeps the property in its actual condition until the legal title can be established. The court interferes on the assumption that the party who seeks its interference has the legal right which he asserts, but needs the aid of the court for the protection of the property in question until the legal right can be ascertained. The office of the court to interfere being founded on the existence of the legal right, a man who seeks the aid of the court must be able to show a fair *prima facie* case in support of the title which he asserts. He is not required to make out a clear legal title, but he must satisfy the court that he has a fair question to raise as to the existence of the legal right which he sets up, and that there are substantial grounds for doubting the existence of the alleged legal right, the exercise of which he seeks to prevent. The court must, before disturbing any man's legal right, or stripping him of any of the rights with which the law has clothed him, be satisfied that the probability is in favour of the case ultimately failing in the final issue of the suit. The mere existence of a doubt as to the plaintiff's right to the property, interference with which he seeks to restrain, does not of itself constitute a sufficient ground for refusing an injunction, though it is always a circumstance which calls for the attention of the court."

In exercising my discretion, I have taken into account all the facts before this court and it is my considered judgment that this application should be dismissed with costs.

Application dismissed.

Solicitors: *Skrine & Co.; Chin & Fernandez*

LEE KAH HONG & ANOR. v. TEOH TIANG GUAN & ANOR.

[O.C.J. (Syed Agil Barakbah J.) July 17, 1971]

[Alor Star — Civil Suit No. 236 of 1968]

Practice and Procedure — Writ of summons — Enlargement of time for renewal of writ — Application for — Discretion of court — R.S.C. 1957, O. 8 r. 1.

Limitation — Writ of summons — Omission to serve on party to action — Application for enlargement of time for renewal of writ — Plea of limitation — Benefit accrued before application was made — Civil Law Ordinance, 1956, s. 7(5).

The plaintiffs filed a writ of summons on October 22, 1968, as administrators of the estate of one Chew Eang Huat (deceased), against the first defendant as the driver and/or servant or agent of the then second defendant, and against the latter as the registered owner of the motor van involved in an accident which led to the death of the deceased. The claim was for damages for loss of expectation of life and loss of support under sections 7 and 8 of the Civil Law Ordinance, 1956. The writ was served on the first defendant but not on the second defendant. On November 4, 1970, an *ex parte* application was made by the plaintiffs for enlargement of time and renewal of the said writ for a period of six months and for the appointment of the official administrator, Malaysia, to represent the estate of the second defendant (since deceased), and to act in his capacity as the duly appointed representative of the estate of the said deceased in place of the second defendant. The application was allowed in terms by the assistant registrar of the High Court, Alor Star, *vide* an order made on November 10, 1970.

It was because of this order that the present application was made by the official administrator, Malaysia, as second defendant, for an order that the writ of summons, accompanied by the statement of claim and the service thereof, be set aside for irregularity on the grounds that: (a) the writ of summons was issued against Teoh See Seng, the then second defendant, when he was already dead; and/or (b) that the renewal of the writ would deprive the second defendant of the benefit of a plea of limitation that had accrued.

The main question which arose was whether the court should exercise its discretion to enlarge the time for renewal of the writ in the circumstances (a) when the period of twelve months under R.S.C. 1957 O. 8 r. 1 had expired; and (b) when the plea of limitation or lapse of time under section 7(5) of the Civil Law Ordinance, 1956, had already accrued.

Held: the discretion to renew the writ and enlarge the time would not be exercised in the plaintiffs' favour as to do otherwise would deprive the second defendant of the benefit of a limitation which had accrued well before the application for extension was made.

Cases referred to:-

(1) *The Firm of T.AR.CT.* v. *The Firm of S.N.S.AR.N.* [1954] M.L.J. 72.

(2) *Holman* v. *George Elliot & Co. Ltd.* [1944] 1 All E.R. 639.

(3) *Battersby & Ors.* v. *Anglo-American Oil Co. Ltd. & Ors.* [1944] 2 All E.R. 387.

(4) *Sheldon* v. *Brown Bayley's Steelworks, Ltd. & Anor.* [1953] 2 All E.R. 894.

(5) *E. Ltd.* v. *C. & Anor.* [1959] 2 All E.R. 468.

CIVIL SUIT.

M.C.P. Tan (Miss) for the applicant/second defendant.

Tan Lye Huat for the respondents/plaintiffs.

Cur. Adv. Vult.

Syed Agil Barakbah J.: This is an application by the Official Administrator, Malaysia, the second defendant in the suit, for an order that the writ of summons accompanied by the statement of claim and the service thereof and all proceedings subsequent to the issue of the writ be set aside for irregularity on the grounds that: -

(a) The writ of summons was issued against Teoh See Seng, the then second defendant, when he was already dead; and/or

(b) That the removal of the writ would deprive the second defendant of the benefit of a plea of limitation that had accrued.

The plaintiffs filed a writ on 22nd October, 1968, as administrators of the estate of one Chew Eang Huat alias Chow Min Kong (deceased) for and on behalf of the said estate and its beneficiaries against the first defendant as the driver and/or servant or agent of the then second defendant and against the latter as the registered owner respectively of a motor van No. PA.8858 which was involved in an accident that led to the death of the deceased. The claim was for damages for loss of expectation of life and loss of support under sections 7 and 8 of the Civil Law Ordinance, 1956, and that the accident was caused by the negligent driving of the first defendant of the said motor van at about 7.30 p.m. on 27th February, 1966, at the 32nd milestone, Bedong/Sungei Patani Road, Kedah.

The writ of summons was served on the first defendant but not on the second defendant. On